IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1261

NORMAN A. CARLSON, DIRECTOR
FEDERAL BUREAU OF PRISONS, ET AL.,

PETITIONERS

v.

MARIE GREEN, ADMINISTRATRIX OF THE
ESTATE OF JOSEPH JONES, JR.,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JONATHAN C. MOORE
G. FLINT TAYLOR
CHARLES HOFFMAN
Attorneys for the Respondent

Haas, Moore, Schmiedel & Taylor
Suite 1607
343 South Dearborn
Chicago, Illinois 60604
312/663-5046

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Regulations	Pages
28 U.S.C. §1331(a)	4, 5, 7
28 U.S.C. §1346(b)	6, 8
28 U.S.C. §2671 et seq.	6, 8
28 U.S.C. §2672	8
28 U.S.C. §2674	8
28 U.S.C. §2680(h)	9
42 U.S.C. §1981 et seq.	12
42 U.S.C. §1983	13, 15
42 U.S.C. §1988	12, 14
Ind. Ann. Stat. §34-1-1-1	13
Miscellaneous	
S. Rep. No 93-588, 93rd Cong, 2nd Sess. [1974] U.S. Code Cong & Admin News, p. 2791	9

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-1261

NORMAN A. CARLSON, DIRECTOR
FEDERAL BUREAU OF PRISONS, ET AL.,

PETITIONERS,

v.

MARIE GREEN, ADMINISTRATRIX OF THE
ESTATE OF JOSEPH JONES, JR.,

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Seventh Circuit Court of Appeals is reported at 581 F 2d 669 (7th Cir. 1978)(Appendix A of Petitioners' Brief). The Seventh Circuit's denial of the petition for rehearing and suggestion for rehearing in banc is set forth in Appendix C of the Petitioners' Brief. The decisions of the trial court are set forth in Appendix B and D of the Petitioners' Brief.

QUESTIONS PRESENTED

1. Whether, in circumstances in which the Federal Tort Claims Act provides an adequate federal remedy, an alternative remedy should be found to be implied under the Eighth Amendment.

2. Whether, if the Eighth Amendment creates such a right, survival of that action is governed by federal common law rather than the state statutes that apply to analogous cases.

STATEMENT OF THE CASE

The Respondent, Mrs. Marie Green, is the next of kin and Administratrix of the Estate of Joseph Jones, Jr., her deceased son. Joseph Jones, Jr. was the last of four Black prisoners at the Federal Correctional Institution at Terre Haute, Indiana, to die, between January and August of 1975, as a result of medical care so inappropriate as to evidence deliberate indifference to serious medical needs.

At the time of his death on August 15, 1975, Joseph Jones, Jr., was serving a ten-year sentence at Terre Haute for bank robbery. He had been diagnosed as a chronic asthmatic in 1972 when he entered the federal prison system. In July, 1975, the prisoner's asthmatic condition required hospitalization for eight days at St. Anthony's Hospital in Terre Haute. Despite the recommendation of the treating physician at St. Anthony's that he be transferred to a prison in a more favorable climate, Jones was returned to the Terre Haute prison. There he was not given proper medication and did not receive the steriod treatments ordered by the physician at St. Anthony's.

On August 15 Jones was admitted to the prison hospital with an asthmatic attack. Although he was in serious condition for some eight hours, no doctor saw him because none was on duty and none was called in. Defendant Dr. Benjamin De Garcia, the chief medical officer directly responsible for the prison medical services, did not provide any emergency procedure for those times when a physician was not present. As time went on Jones became more agitated and his breathing became more difficult. Although Jones' condition was serious, defendant Medical Training Assistant William Walters, a non-licensed nurse then in charge of the hospital, deserted Jones for a time to dispense medication elsewhere in the hospital. On his return to Jones, Walters brought a respirator and attempted to use it despite the fact that Walters had been notified two weeks earlier that the respirator was broken. After Jones pulled away from the respirator and told Walters that the machine was making his breathing worse, Walters administered two injections of Thorazine, a drug contraindicated for one suffering an asthmatic attack. A half-hour after the second injection Jones suffered a respiratory arrest. Walters and Staff Officer Emmett Barry brought emergency equipment to administer an electric jolt to Jones, but neither man knew how to operate the machine. Jones was then removed to St. Francis Hospital in Terre Haute; upon arrival he was pronounced dead.

On June 18, 1976, Mrs. Green filed a complaint on behalf of her deceased son's estate. Named as Defendants were six officials, officers and employees of the Federal Bureau of Prisons, sued in their official and individual capacity. Also named as a Defendant was the Joint Commission on Accreditation of Hospitals, which was responsible for accrediting and inspecting the prison hospital at Terre Haute.

The complaint alleged that Joseph Jones, Jr., died as a result of medical care so inappropriate as to evidence intentional maltreatment, and that the Defendants' acts violated the

Due Process clause and the equal protection component of the Fifth Amendment in addition to the Eighth Amendment's prohibition against cruel and unusual punishment.

Jurisdiction of the District Court was invoked pursuant to 28 U.S.C. §1331(a). Plaintiff prayed for a total of $1,500,000 in actual damages, and $500,000 in punitive damages.

On January 10, 1977, the District Court, pursuant to motions filed by the defendants, dismissed the complaint for lack of subject matter jurisdiction. The court held that the plaintiff could not satisfy the $10.000 jurisdictional amount requirement of 28 U.S.C. §1331(a) because of the limitations on recoverable damages under the Indiana wrongful death and survival statutes. In dismissing the complaint, the District Court noted that these Indiana state statutes were the "sole mechanisms," Memorandum Entry of District Court, Petitioner's Appendix D, p. 26a, by which Mrs. Green, as the sole representative of her son's estate, could maintain an action for damages.

The trial court recognized that an action for damages may be brought for a violation of a right guaranteed by the Constitution. Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). The trial court further recognized that under the authority of Estelle v. Gamble, 429 U.S. 9 (1976), Joseph Jones, Jr., could have maintained this Bivens-type action had he survived the alleged wrongs. However, because survival of Jones' federal claim, in the view of the District Court, was governed by state law, the District Court felt compelled to dismiss the complaint.

The Seventh Circuit Court of Appeals reversed, in all parts relevant to this Petition, the decision of the District Court. The court agreed with the District Court that the Respondent had alleged sufficiently a Bivens-type right of action arising directly under the Eighth Amendment. Further, the court found that the jurisdictional amount requirement of

28 U.S.C. §1331(a) was satisfied because it refused to apply the Indiana survival statute to this case. The court concluded that "whenever the relevant state survival statute would abate a Bivens-type action brought against defendants whose conduct results in death, the federal common law allows survival of the action." Green v. Carlson, 581 F2d 669, 675 (7th Cir. 1978). (Emphasis supplied.)

On November 24, 1978, the Seventh Circuit Court of Appeals, on consideration of the petition for rehearing and suggestion for rehearing en banc filed by the Petitioners, and after ordering the Respondent to file an answer to said Petition, denied the Petition for rehearing in all respects. (Petitioners' Appendix C, p. 20a).

REASONS FOR DENYING THE WRIT

The questions presented by the petitioners on review are wholly insufficient to warrant plenary review when judged by the standards established in Supreme Court Rule 19. See American Construction Co. v. Jacksonville Railway, 148 U.S. 371, 384 (1893). No conflict with any decision of this Court or any other Court of Appeals is present.

I. THE RESPONDENT'S COMPLAINT STATES A CLAIM FOR RELIEF UNDER THE CONSTITUTION AGAINST THE INDIVIDUAL DEFENDANTS, NOTWITHSTANDING THE AVAILABLITY OF A CLAIM AGAINST THE UNITED STATES UNDER THE FEDERAL TORTS CLAIM ACT.

The Petitioners frame the issue in a very narrow fashion. Based on their reading of Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), they would have this Court reverse the thoughtful and considered opinion of the Seventh Circuit Court of Appeals because of their contention that the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671 et seq., provides an adequate remedy for Respondent here, such as to totally preclude a remedy under the Eighth Amendment of the United States Constitution.

This argument demonstrates a fundamental misunderstanding of the Federal Tort Claims Act. It also ignores the intent of Congress when it amended the Act in 1974. Finally, the Petitioners fail to take cognizance of this Court's decision in Estelle v. Gamble. 429 U.S. 97 (1976).

A. A CLAIM IS STATED UNDER THE EIGHTH AMENDMENT FOR MEDICAL TREATMENT SO INADEQUATE AS TO AMOUNT TO A REFUSAL TO PROVIDE ESSENTIAL MEDICAL CARE.

Both the Southern District of Indiana and the Seventh Circuit recognize what the Petitioner chooses to ignore. The Constitution mandates a standard of care for prisoners, whether they be state or federal. In Estelle v. Gamble, 429 U.S. 97 (1976), this Court concluded, based on a thorough discussion of the Eighth and Fourteenth Amendments, that,

> ...deliberate indifference to serious medical needs of prisoners constitutes the "unnecessary and wanton infliction of pain," Gregg v. Georgia, supra at , proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoners' needs or by prison guards in intentionally interfering with the treatment once prescribed.

429 U.S. 104-105. As the Seventh Circuit recognized below, in deciding whether dismissal by the trial court of the Respondent's claim was proper, given the criteria delineated in Estelle, "The alleged conduct of the federal defendants

rises to the level of constitutional violations." Green v. Carlson . 581 F2d 669, 675 (7th Cir. 1978).

This conclusion is compelled by Bivens, supra, which recognized the existence of a substantive federal claim based directly on the Fourth Amendment and held that, despite the absence of any statute conferring such a right, the courts have the inherent power to create a damage remedy for injuries suffered at the hands of federal officials for violation of that right. In addition to Estelle, supra, the overwhelming majority of courts which have considered the issue have held that a cause of action for damages can be maintained directly under the Constitution. Green v. Carlson, supra; Loe v. Armstead, 582 F2d 1291 (4th Cir. 1978); Beard v. Robinson, 563 F2d 331 (7th Cir. 1977); Briggs v. Goodwin, 569 F2d 10 (D.C. Cir. 1977); Jacobson v. Tahoe Regional Planning Agency, 566 F2d 1353 (9th Cir. 1977); Paton v. LaPrade, 524 F2d 862 (3rd Cir. 1975); Wounded Knee Legal Defense/Defense Committee v. FBI, 507 F 2d 1281 (8th Cir. 1974).*

The failure of the Petitioners to discuss Estelle and its progeny is both inexcusable and understandable. Recognition of the import of Estelle would leave the Petitioners with no supposed conflict in the case law, a ground upon which they urge this Honorable Court to grant certiorari. In fact, the Petitioners can point to no cases that approach the factual context of this case which differ with the conclusion reached by the Seventh Circuit in this case.

---

*Although Bivens, supra, on its facts related only to an alleged Fourth Amendment violation, any doubt as to whether the Bivens rationale extends to alleged violations of other Amendments was impliedly disposed by this Court in City of Kenosha v. Bruno, 412 U.S. 507 (1973). In Bruno, the plaintiff asserted a claim directly under the Fourteenth Amendment. This Court, in remanding the case, indicated that a cause of action would be available under the Fourteenth Amendment, if the plaintiff could properly allege the requisite jurisdictional amount under 28 U.S.C. §1331(a).

B. THE FEDERAL TORT CLAIMS ACT IS A SUPPLEMENTAL REMEDY TO RESPONDENT'S BIVENS-TYPE REMEDY FOR THE CONSTITUTIONAL DEPRIVATIONS ALLEGED IN THE COMPLAINT.

The Petitioners argue that Bivens mandates the result they urge upon this Honorable Court. Nothing could be further from the truth. It is true, as the Petitioners note, that this Court indicated in Bivens that the existence of "another (federal) remedy, equally effective in the view of Congress," id. at 397, might be one factor militating against the implication of a constitutional damages action. It is not true, indeed it is ludicrous to suggest, that the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671 et seq., should supplant the Constitution as Joseph Jones, Jr.'s only remedy, through his estate, for his death. A brief examination of this Act and its recent amendment demonstrates the inadequacy of the Act as a remedy for constitutional violations.

The Act adopts as a choice of law rule "the law of the place where the act or omission occurred." 28 U.S.C. §2672, thus defeating the goal of uniformity of treatment of federal officials. Garber v. United States, 578 F 2d 414 (D.C.Cir. 1978); Bowen v. United States, 570 F 2d 1311 (7th Cir. 1978). As Judge Swygert indicated in Green, "(t)he liability of federal agents for violation of constitutional rights should not depend upon where the violation occurred." Id. at 675.

Under the Federal Tort Claims Act the federal government is not liable for punitive damages. 28 U.S.C. §2674. This is contrary to the rule which now prevails in the federal courts in civil rights, and by analogy, Bivens-type actions. Basista v. Weir, 340 F 2d 74 (3rd Cir. 1965). This rule would also defeat an important part of the claimed relief in the instant case.

More importantly, the Act is designed to merely waive the sovereign immunity of the federal government for the tortious conduct of its employees in certain specified situations. It is not designed as a remedy to supplant the Respondent's constitutional remedy as Petitioners suggest. As one court has said, "(t)he Tort Claims Act by its terms applies only when the action is against the United States." Turner v. Ralston, 409 F Supp 1260, 1261 (W.D.Wisc 1976). In fact, "(u)nless recovery is had from the United States or the liability arises from an automobile accident, . . ."the. . . Act does not touch the liability of the (federal) employees . . . ." United States v. Gilman, 347 U.S. 507, 509 (1954) (citations omitted)." Id. at 1261.

The amendment to the Act in 1974, does not, at the Petitioners suggest, make the Act a more adequate remedy such that an aggreived victim should be denied his/her constitutional claim. The amendments in 1974 were, without doubt, a response to Bivens. The intent of Congress was not, however, to narrow the possible remedies of someone in Webster Bivens shoes, but rather to expand the possible choice of remedies. The intent of Congress was to supplement an aggreived individuals right of action against an individual federal employee with a right of action against the United States in certain circumstances. 28 U.S.C.§2680(h). Even a cursory examination, which Petitioner evidently failed to do, reveals Congress' intent to supplement an action against the individual wrongdoer with one against the government.

> ...this provision should be viewed as a counterpart to the Bivens case and its progeny, in that it waives the defense of sovereign immunity so as to make the Government independently liable in damages for the same type of conduct. That is alleged to have occurred in Bivens (and for which that case imposes liability upon the individual Government officials involved).

S. Rep. No. 93-588, 93rd Cong. 2d Sess. reprinted in [1974] U.S. Code Cong & Admin News, p. 2791. (Emphasis supplied.)

Thus, the only fair reading of the 1974 amendments to the Fed-

eral Torts Claims Act suggests that it was meant to avoid occasions where a judgment becomes worthless because the individual federal employee lacks the funds to satisfy it. Norton v. United States, 581 F2d 390 (4th Cir. 1978)

The Petitioners suggest, at pp. 10-14 of their brief, a number of other cases which are supposedly in conflict with Green. A closer examination reveals this to be a fiction.

In Brown v. General Services Administration, 425 U.S. 820 (1976), the Petitioner was precluded from a non-Title VII remedy, and thus faced dismissal, because the Court found that, "...the congressional intent in 1972 was to create an exclusive, pre-emptive administrative and judicial scheme for the redress of federal employment discrimination," id. at 829, where no effective judicial remedy existed prior thereto. Can it be said the same is true in the instant case. Has Congress, through the Federal Tort Claims Act amendment of 1974, which was attached as a rider to a reorganizational bill, provided an "exclusive" and "pre-emptive" remedy in the fight to eradicate unconstitutional misconduct by federal officials? The Respondent respectfully urges that it has not. Rather, Congress has simply engaged in a waiver of sovereign immunity as to certain tort claims.

The other cases, aside from two lower court opinions from the Southern District of New York, cited by the Petitioners involve a fact situation not present in the instant case. Molina v. Richardson, 578 F2d 846 (9th Cir. 1978); Richardson v. Wiley, 569 F2d 140 (D.C. Cir. 1977), and Mahone v. Waddle, 564 F2d 1018 (3rd Cir. 1977), all involved situations where the courts attempted to keep the law in Bivens -type actions coextensive with that developed under the Civil Rights Acts. As the Court indicated in Green,

> because actions brought under the Civil Rights Act and those of the Bivens-type are conceptually identical and further the same politices, courts have frequently looked to the Civil Rights Act and their decisional gloss for guidance in filling the gaps left open in Bivens-type actions.

Id at 673. (Citations omitted.)

As the Petitioner note in their brief, at page 14, Davis v. Passman, 571 F2d 793 (5th Cir. 1978), does not present the question which this case involves. To this the Respondent would agree. Even, assuming, arguendo, that Davis is applicable it is distinguishable because of the special relationship that exists, by statute, between a member of Congress and a member of his/her staff. This relationship,

> is a matter peculiarly within the concerns of the legislative branch and...special factors therefore counsel against implication of a Bivens type remedy. Indicative of this special relationship is 2 U.S.C. §92, which makes members of a congressman's personal staff removable at any time with or without cause. Furthermore, the amendments to Title VII...did not protect persons in non-competitive federal positions such as congressional staff members.

Loe v. Armistead, 582 F2d 1291, , N. 2 (4th Cir. 1978).

In sum, the Petitioners can cite to no authority of this Court or the Circuit Courts of Appeal which conflicts with the opinion of the Seventh Circuit in Green. For the above reasons, the Respondent respectfully requests of this Honorable Court that, as to the first question presented for review, the Petition for a Writ of Certiorari be denied.

II. WHERE APPLICATION OF THE INDIANA SURVIVAL STATUTE WOULD ABATE THIS BIVENS-TYPE ACTION AGAINST THESE DEFENDANTS, WHOSE CONDUCT RESULTED IN THE DEATH OF JOSEPH JONES, THE FEDERAL COMMON LAW MANDATES SURVIVAL OF THE ACTION.

The second question presented for review concerns whether, assuming the Eighth Amendment creates a right of action against the Petitioners, survival of that action is governed by federal common law or the law of the state where the injury occurs. Having raised the issue, the Petitioners fail to indicate why this Honorable Court should review the decision of the Seventh Circuit. All the Petitioners assert is that "...this Court should review that decision," (Petitioners' Brief, p. 17), because they disagree with the Seventh Circuit's treatment of Robertson v. Wegmann, 436 U.S. 584 (1978). No conflict among the Circuits, or indeed in the lower federal courts, is indicated by the Petitioners.

The Respondent asserts that the decision of the Court in Green is fully supported by this Court's decision in Robertson. As a preliminary matter it must be pointed out that Robertson has no binding effect on the resolution of the issues in this case. The plaintiff here is suing directly under the Constitution, a Bivens-type action, and not under the Civil Rights Acts, 42 U.S.C. §1981 et seq. Thus, 42 U.S.C. §1988, which directs the federal courts to ulitize state laws to the extent that they are not consistent with "the Constitution and laws of the United States", has no statutory effect. The Seventh Circuit expressly notes this. Green v. Carlson, 581 F2d 669, 673 (7th Cir. 1978).

Nonetheless, the Court "looked to the Civil Rights Acts and their decisional gloss for guidance in filling the gaps left open in Bivens-type actions." Id. The Court's application of this analogous law carefully evaluated the impact of Robertson in reaching its conclusion. This conclusion is fully supported by the different factual situations and policy considerations presented in Green and Robertson.

The primary difference, of course, is that Green presents a question expressly reserved by the Supreme Court in Robertson.

> Unlike Shaw, Jones, Jr. is alleged to have died as a result of the deprivation of his civil rights. In Robertson the Court expressly intimated no view about whether abatement based on state law would be allowed in that situation.

Green, at 674.

Where, as in the instant case, death is caused by the very conduct complained of, the federal policies of deterrence, which as the Court noted in Green underlie §1983 and by analogy Bivens-type actions, would be thwarted by abatement. As the Court notes, it is this concern, "prevention of abuse of power by officials, which distinguishes this case from Robertson." Id. at 673-674.

The Petitioners assert in their Petition, at n.14, pp. 14-15, that ",,,the Indiana statute is more generous than the Louisiana provision approved by this Court..." in Robertson. In fact, the opposite is true. The state law of survival in Robertson was more hospitable, more consistent with the nature of federal right being protected. The claim of Marie Green in this case would have survived had it been brought in Louisiana.* The proper reading of the Indiana survival statute, Ind.Ann. Stat., §34-1-1-1, is that all cause of actions for personal injuries to a deceased party survive only when that person... thereafter dies from causes other than said personal injuries so received." (Emphasis supplied.) If this statute is held controlling, it would not merely limit the amount of recovery, it would abate the action entirely. Judge Swygert, unlike the Petitioners here, understood the sinister implications of applying the Indiana Survival Act to this type of action.

> Joseph Jones, Jr. died allegedly as a result of the personal injuries caused

---

*"In actions other than those for damage to property, however, Louisiana does not allow the deceased's personal representative to be substituted as plaintiff; rather, the action survives only in favor of a spouse, childre, parents, or siblings..." Robertson at 561-62 (emphasis supplied). 56 L.Ed. 2d

> by the alleged wrongdoing, and not from causes other than those personal injuries. Thus the only cause for personal injury permitted to survive under Indiana law encompasses a factual situation different from that alleged in this case.

Green at 673, n. 8.

In fact, if the Indiana survival statute controls, there can never be a civil rights action or Bivens-type action brought in that state where death results from the conduct of government officials. As the Court correctly concluded, "(s)uch a holding would not only fail to effectuate the policy of allowing complete vindication of constitutional rights; it would subvert that policy." Green at 674.

The need for uniformity in fashioning survival rules in Bivens-type actions is of greater import in Green than Robertson. At bottom here is a recognition that this case presents a purely federal situation. No "state officials" are implicated in the unconstitutional conduct complained of. In fact, the Petitioners fail to articulate any adverse impact on the state law or policy of Indiana which is implicated by disregarding the state statute on survival. Because this is a Bivens-type action, resort to 42 U.S.C. §1988 is not mandated. As this Court noted in Robertson,

> (W)hatever the value of nationwide uniformity in areas of civil rights enforcement where Congress has not spoken, in the areas to which §1988 is applicable Congress has provided direction, indicating that state law will often provide the content of the federal remedial rule. This statutory reliance on state law obviously means that there will not be nationwide uniformity on these issues.

Robertson, 56 LEd 2d at 563, n. 11.

The reverse is true here. Congress has not spoken on the question of statutory reliance on state law in Bivens-type actions. As Judge Swygert noted in Green, since 42 U.S.C. §1988, "has no statutory effect on Bivens-type actions, and we find that this is an area of law in which courts must be

free to develop federal common law, Robertson's rejection of the deniability of uniformity has no bearing on this case." Green at 674-75, n. 11.

Where a claim is asserted against federal officials, the need for uniform treatment of these claims is greater than in an analogous §1983 claim.

> As this very case illustrates, uniformity cannot be achieved if courts are limited to applicable state law. Here the relevant Indiana statute would not permit survival of the claim, while in Beard the Illinois statute permitted survival of the Bivens action. The liability of federal agents should not depend upon where the violation occurred.

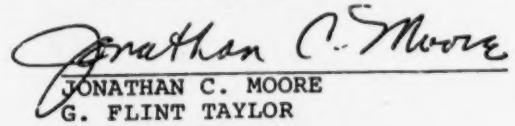
Green at 674-675.

If certiorari were to be granted in every case in which a circuit court of appeals has dared to interpret a decision of the Supreme Court, this Court would be inundated with a mountain of frivolous petitions. Distilled in its roughest form, however, this is the essence of the Petitioner's argument. As to the second question presented for review, the Petitioners seek review on non-reviewable grounds; they disagree with the result reached by the Seventh Circuit. Since the Petitioners have failed to demonstrate how Green conflicts with any decision of this Court or, for that matter, any decision of any lower federal court, the Respondent respectfully suggests that this writ of certiorari as to the second question presented for review should be denied.

III. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit should be denied.

Respectfully submitted,



JONATHAN C. MOORE
G. FLINT TAYLOR
CHARLES HOFFMAN
Attorneys for the Respondent

Haas, Moore, Schmiedel & Taylor
Suite 1607
343 South Dearborn
Chicago, Illinois 60604
312/663-5046